

## FORM SUMMARY

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**Name of Form:** **Arrest-Bench Warrant/Capias**

**Form Number:** **GF-142**

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**Statutory Reference:** Chapter 345, §§885.11(2), 968.04(3)(a), 968.09, Wisconsin Statutes

**Purpose of Form:** Written order directing law enforcement to arrest an individual. The terms "arrest warrant," "bench warrant," "capias," and "body attachment" are often incorrectly used interchangeably.

### **Arrest Warrant**

An "arrest warrant" is used in situations in which the person has not yet appeared in court or otherwise submitted to the jurisdiction of the court. The court orders the arrest of the defendant in order to bring the person before the court and to confer jurisdiction on the court over the person. Section 968.04(3)(4), Wisconsin Statutes, provides for specific mandatory provisions for such warrants. One of the requirements is the warrant specify the name of the crime and the section charged and the number of the section alleged to have been violated. RMC believes this can be accomplished by attaching a copy of the complaint or citation to the warrant. Therefore, RMC has placed an instruction to that effect in the warrant (in bold) with a reference that the name of the crime and statutory references are incorporated into the warrant.

In criminal matters, a copy of the criminal complaint must be attached. This complaint contains a probable cause statement and is under oath. In noncriminal matters brought by citation, there is no probable cause statement nor is the citation under oath. Courts may also be reluctant to issue arrest warrants without some basis to believe the defendant was actually personally served and there is sufficient probable cause. Since §345.36, Wisconsin Statutes, provides that for nonappearance a warrant may be issued under Ch. 968, it would appear that the Ch. 968 safeguards must also be considered.

Therefore, in all cases in which the court issues an arrest warrant for failure to appear in response to a citation, the Committee suggests that an Affidavit of the Court Officer be completed and attached, indicating that the defendant was personally served with the citation and the basis for the issuance of the citation (personal knowledge or information and belief.)

### **Bench Warrant**

A "bench warrant" is used in situations in which the person has previously appeared in court or submitted to the jurisdiction of the court but fails to appear in court as required. It is generally issued from the bench; hence the term "bench warrant." It is not necessary to attach a copy of the complaint or citation, or an affidavit of the court officer described above.

### **Capias**

The term "capias" is a Latin term meaning "that you take"; in this context it is used to "take the body" before the court. Another term often used is "body attachment." The capias is used in this instance to order law enforcement to arrest and bring the person before the court for failure to comply with certain court orders, including:

- failure to appear (including witnesses, respondents in paternity or divorce actions),
- failure to pay financial obligations (fines, forfeitures, assessments, surcharges, and court costs, any any other type of financial obligation). For financial obligations, the person arrested may be released with no further court appearances upon payment of the financial obligation.

<b>Who Completes It:</b>	Clerk of Court
<b>Distribution of Form:</b>	Original: Court file Copies: Law enforcement, attorneys
<b>Accompanying Forms:</b>	Arrest warrant <ul style="list-style-type: none"><li>• Copy of complaint or citation</li><li>• Affidavit of the court officer</li></ul> Bench warrant <ul style="list-style-type: none"><li>• No other forms needed</li></ul> Capias <ul style="list-style-type: none"><li>• No other forms needed</li></ul>
<b>New Form/Modification:</b>	Modification; last update 06/00.
<b>Modification:</b>	Added box to indicate charges. Added space for geographic restriction.  Previous modification: Modified the sentence in lower left corner to read: "If the person posts the total amount due and is released, the law enforcement agency shall inform the court and district attorney of any new court date."
<b>Comments:</b>	Geographic restriction information is required for entry into the Crime Information Bureau (CIB) TIME system. This restriction information limits where the warrant will be executed.  This form <b>should not</b> be used to take a <i>juvenile</i> into custody in a juvenile court proceeding. There is a separate form called "Capias" (JD-1714) for such proceedings.
<b>About this form:</b>	This form is the product of the Wisconsin Records Management Committee, a committee of the Director of State Court's Office and a mandate of the Wisconsin Judicial Conference.  <b>If you have additional information that does not change the meaning of the form, attach it on a separate page. The form itself shall not be altered.</b>